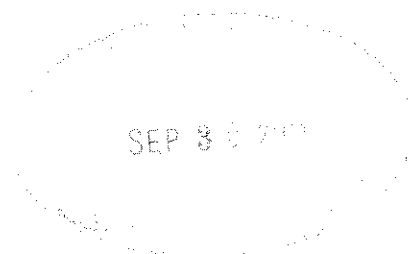




BILL SCHUETTE
ATTORNEY GENERAL
STATE OF MICHIGAN

September 29, 2011

Corbin R. Davis
Clerk of the Michigan Supreme Court
Post Office Box 30052
Lansing, MI 48909



Re: ADM File No. 2008-36

Dear Mr. Davis:

As the chief law enforcement officer for the State of Michigan, I write to express my support for the proposed amendment to MCR 7.202, which is identified as Alternative A in ADM File No. 2008-36. I also wish to commend the Court for pursuit of a resolution to the Hobson's choice faced by many prosecutors under circumstances similar to those described in *People v Richmond*, 486 Mich 29 (2010). The position I take today is consistent with that of my predecessor, who filed a brief in the *Richmond* case as Amicus Curiae.

Under current law, when the criminal trial court elects to suppress critical evidence to the prosecution, the People are forced to either: (i) pursue the charge in the absence of the vital evidence and face dismissal or acquittal with jeopardy attaching; or (ii) seek an interlocutory appeal by application which may or may not be granted—and continue on with the case facing dismissal or acquittal with jeopardy attaching. Alternative A is the preferred method to address and correct this problem because of the certainty and predictability it affords the process. When a trial court suppresses indispensable evidence but does not dismiss the case, its suppression order has effectively ended the case.

Accordingly, the People should have an appeal of right of the suppression decision—a choice that they would undeniably have if the trial court had dismissed the case. Alternative A also operates in a favorable manner to limit the opportunity for the parties to engage in those rare cases of gamesmanship or abuse that can occur in conjunction with last minute “death knell” evidentiary rulings.

Thank you for the opportunity to comment on these proposed changes.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Bill Schuette
Attorney General